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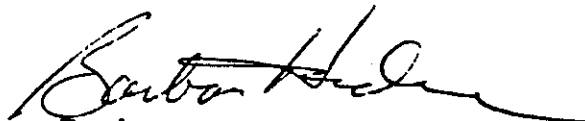
NOTE TO LUANA REYES

I have been asked by Dr. Craig Vanderwagen to confirm in writing that the Indian Health Service (IHS) may use the Indian Self Determination (ISD) fund to pay contract support for Title III tribes. After researching the appropriation act, the Indian Self Determination Act (ISDA), and principles of contract law, I conclude that the IHS may use the ISD fund to pay contract support costs agreed to in the self-governance annual funding agreements (AFAs) for FY 1995.

The appropriation act for the IHS states that the ISD fund may be used for "contracts, grants, or cooperative agreements." I believe that this phrase is broad enough to include Title III compacts. As previously noted by this office, compacts are unique legal instruments which do not fall neatly within the traditional relationships entered into by the government as described in the Federal Grant and Cooperative Agreement Act of 1977 (FGCAA). (See memorandum of B. Hudson dated August 24, 1993 and memorandum of L. Naas dated May 27, 1994.) The Supreme Court has characterized a compact as a "contract" which "must be construed and applied in accordance with its terms." (Texas v. New Mexico, 482 U.S. 124, 128 (1987).)

In addition to the appropriation act, I examined the ISDA. I found nothing in the ISDA which would prohibit the use of ISD funds to pay contract support for compacting tribes. In fact, section 303(a)(6) specifies that a Title III tribe will receive no less than it would have under Title I. Section 106(a)(2) of Title I anticipates the payment of contract support costs.

Thus, it is my opinion that IHS may use the ISD fund to pay for the contract support costs agreed to in the FY 1995 AFAs. If there are further questions, please give me a call at 443-0406.



Barbara Hudson
Attorney